

FILED

MAY 16 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

WAYNE E. EAGLEMAN,

Plaintiff,

vs.

NURSE STEPHANIE SANDSTROM,
NURSE CRYSTAL RICHARDSON, and
INFIRMARY STAFF,

Defendants.

CV 13-09-H-DLC-RKS

ORDER

United States Magistrate Judge Keith Strong entered Findings and Recommendation on March 29, 2013, and recommended dismissing this case with prejudice. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Eagleman alleges Defendants violated his Eighth Amendment right to

protection from cruel and unusual punishment by misplacing an IV in his arm.

Judge Strong found that Eaglement has not alleged a purposeful act or failure to respond to his medical needs. Judge Strong concluded that Eagleman has failed to state a federal claim for relief against Defendants. Further, these are not defects which could be cured by further amendments. After a review of Judge Strong's Findings and Recommendation, I find no clear error. Accordingly,

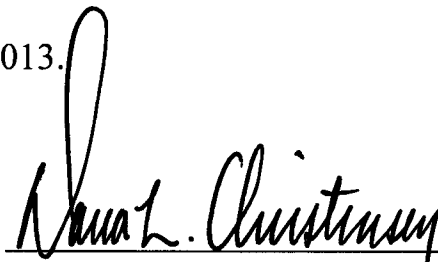
IT IS ORDERED that Judge Strong's Findings and Recommendation (doc. 7) are adopted in full. This matter is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.

The Clerk of Court is directed to close this case and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain this action lacks arguable substance in law or fact.

The Clerk of Court is directed to have the docket reflect this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Mr. Eagleman failed to state a claim upon which relief could be granted.

DATED this 16th day of May, 2013.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looping initial "D".

Dana L. Christensen, Chief Judge
United States District Court